

25 February 1955

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MEMORANDUM FOR THE RECORD

SUBJECT: Contractual Arrangements - Project OCTROI

A. Review of Existing Procurement Situation:

In late calendar year 1954 Agency officials contacted the Perkin-Elmer Corporation in connection with a need for the services of such corporation in connection with project ACUATONE. That portion of the project proposed to be accomplished by the Perkin-Elmer Corporation was designated project OCTROI. Original conversations were held with Mr. Perkin, President of the Perkin-Elmer Corporation, who agreed to undertake the work. Dr. R. M. Scott of the Perkin-Elmer Corporation was also knowledgeable of the project and of our interest.

The Perkin-Elmer Corporation began preliminary planning and preparations for the work on the basis of verbal arrangements that a redeterminable price, fixed price type contract would be negotiated between the Agency and the Corporation at the time the complete scope of the work and estimates of cost, were known. Whether such contract would be strictly commercial in format, or whether it would be some form of Agency sterile contract was left open at the time. In the interim the Contractor was to proceed with the work without revealing any Government interest in or connection with the work.

The Contractor began to work on the project and indicated to his plant employees that the Corporation had obtained a large commercial order, which it designated loosely as "The Projector Project," for which unusual arrangements would have to be made with respect to extra facilities and method of handling. Subsequently, on the advice and with the concurrence of Agency Security personnel, the other ranking members of the Contractor's staff were made knowledgeable as to Government interest - but not as to Agency interest (see Memorandum for the Record dated 6 January 1955).

On 5 January 1955 a Letter Contract was signed by Mr. Perkin and the undersigned as designated Agency contracting officer which authorized the Contractor to expend up to \$2,500,000 and which contemplated the negotiation of a definitive contract within sixty days from date of such Letter Contract. The Letter Contract was

Government sterile and phrased in ordinary commercial language. During the sixty day period Dr. Scott was to work up final specifications and cost figures to furnish a basis for negotiation of the contract price. At this time reference was made to the type of contract with respect to pricing arrangements - redeterminable fixed price. No decision was reached as to whether the contract should be commercial or be an Agency sterile government contract.

Subsequently in a preliminary negotiation meeting with Contractor's personnel (see Memorandum for the Record, dated 10 February 1955), at which Mr. Perkin was not present, the matter of the type of contract - commercial ~~vs~~ Government - again arose. There was definite indication that the Contractor's personnel favored a strictly commercial arrangement - with the negotiated price to be fixed and not subject to redetermination of the price after completion of the contract.

The reason given for their favoring a commercial arrangement was that they had made it known to the plant personnel that the contract work was of commercial origin and to change the story at this time would only arouse further suspicion at the plant. The receipt of what appeared to be a commercial contract would maintain all normal commercial billing, accounting and other procedures.

The reason given for favoring a fixed price contract, without redetermination of price after completion of the work, was that the Contractor could estimate the costs involved, by virtue of the type of articles to be furnished and because of past experience in similar work, so closely that it would be entirely feasible to write a fixed price supply type contract.

The undersigned pointed out that the determination as to the level and nature of the security aspects of this procurement were the province of the Sponsor, and if the Sponsor felt that some form of Government contract would fulfill security requirements there would remain no basis for writing a strictly commercial type contract. The undersigned also stated, however, that it would be quite possible to fulfill both requests by writing a government type contract, binding on both parties, which would remain in the background, and concurrently giving the Contractor a commercial order which it could use overtly as the cover for the work and against which it could bill the Government through a third party who would front the commercial order. Contractor's personnel agreed to consider this possibility.

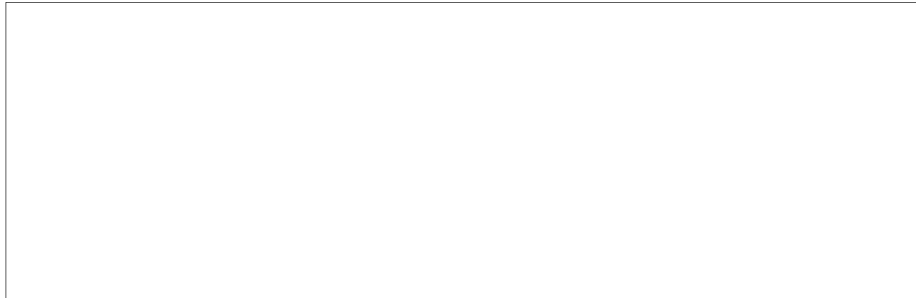
With respect to the price, the undersigned indicated extreme reluctance to enter into a firm fixed price for articles never before produced and in a situation where over one-half of the funds will be used for subcontracting. Instead, a Form III of Form IV price redetermination article was suggested.

B. Recent Developments in this Procurement:

A document was received on 21 February 1955 from Dr. Scott through the established mail channel to the Security Office. It is annotated "First revision 2-16-55" and the subject is, "CONTRACT PROPOSAL."

In the above document Dr. Scott expresses general agreement with the proposal for the contractual arrangement as outlined by the undersigned, but also indicated the following:

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2. That the clauses proposed by the undersigned, with minor changes, are acceptable.

Thus, the Contractor is still clinging to the idea of a firm fixed price contract. In addition, the Contractor appears to require assurance of good faith at a level above that of the DCI. Subsequent to the date of the above document and prior to receipt thereof by the undersigned, (on 18 February 1955) the undersigned talked with Dr. Scott on the sterile phone and discussed (i) the contractual arrangements in general, and the next meeting to be held (28 February 1955) for discussion of the definitive contract, and (ii) specifically a Letter of Intent necessary to be issued by the Perkin-Elmer Corporation to HYCON, subcontractor.

There was agreement as to the general contractual arrangements (firm price vs redeterminable price). Dr. Scott desired to place a Letter of Intent with HYCON in the amount of \$100,000 since HYCON had to date been operating on verbal assurances only.

Approval was given to Dr. Scott authorizing the Perkin-Elmer Corporation to issue a Letter of Intent to HYCON in the amount of \$100,000, subject to the following restrictions:

1. The knowledgeable persons at HYCON who know of Government interest are to be informed that contractual arrangements between Perkin-Elmer and HYCON will follow the same pattern as arrangements between Perkin-Elmer and the Government. This would involve a definitive contract to be negotiated between Perkin-Elmer and HYCON at a later date, which would be based on the Government requirements of Perkin-Elmer's basic contract, and would be the real governing document. The Letter of Intent issued by Perkin-Elmer and eventually to be replaced by a Perkin-Elmer order would be the overt document for cover purposes only.
2. The Letter of Intent from Perkin-Elmer to HYCON should follow generally the stipulations in the Letter of Intent between Perkin-Elmer and the Government. It should be on Perkin-Elmer letterhead, signed by an official of the Corporation, should not reveal Government interest, and should not in any way refer to the project.
3. It should be effective for a period not to exceed sixty days in an amount of \$100,000.

Dr. Scott will furnish the undersigned with a copy of the document for our files. The undersigned explained to Dr. Scott that telephonic approval was given in this instance since this Letter of Intent was general in nature, for a limited amount, and was for cover purposes only. The undersigned further stated that the definitive contract between Perkin-Elmer and HYCON would be subject to the prior approval of the Contracting Officer in all contractual aspects.

C. Contracting Officers Recommendations

The undersigned makes the following recommendations with respect to contractual arrangements between Perkin-Elmer and the Government.

1. Basic Contract

- (a) Government form (Agency sterile) consisting of GENERAL PROVISIONS which are standard, as listed in ASPR, with minor modifications made, where necessary, for security reasons.
- (b) Original of basic to have a contract number placed thereon, said number to be recorded in Sponsor's records.
- (c) Original of basic to be signed by the Contractor and by authorized representative of Sponsor and this copy to be retained in Sponsor's files.
- (d) Sterilized copy of basic, without contract number or signatures, and unclassified, furnished to Contractor for reference purposes in administration of the contract.

A sterilized copy of the basic contract is needed by the Contractor's administrative personnel in order that they may comply with general contract requirements. Such a copy, although identified with the Government, is not identified with the Agency or with the work being performed under the contract since it will have no number, signatures, scope of work, or price. Since the Contractor has other Government contracts no security problems are posed.

2. Schedule to Basic Contract

- (a) Government form (Agency sterile) consisting of sections treating specifically the procurement aspects of this particular procurement. These aspects include general description of the articles and services to be performed (work), specifications, price and payment, price redetermination clause, delivery, special security considerations, etc. The more sensitive portions of the above (detail description of the items, specifications, etc.) will be included in a separate APPENDIX which will not be shown to any of the Contractor's personnel other than Dr. Scott and Mr. Perkin. This SCHEDULE will also include a clause to allow for departure, when necessary, from requirements of the GENERAL PROVISIONS, especially as regards the placing of subcontracts in such manner as not to reveal Government interest.

- (b) Original of SCHEDULE and original of APPENDIX will bear same contract number as original of GENERAL PROVISIONS.
- (c) Original of SCHEDULE and original of APPENDIX will be initiated by Contractor and representative of the Sponsor and will be retained in Sponsor's files.
- (d) Sterilized copy of the APPENDIX, without contract number and without initials, and with price and general description of work deleted and unclassified will be furnished to the Contractor for reference purposes in administration of the contract.

A sterilized copy of the SCHEDULE is needed by the Contractor's administrative personnel in order that he may comply with specific contract requirements. Such a copy, although identified with the Government is not identified with the Agency or the work being done under the contract. Actually, unless filed together, it is not identified with the basic contract since it likewise has no number or signatures, the price and general description of the work have been deleted, and the APPENDIX is not available to Contractor's personnel other than Dr. Scott and Mr. Perkin.

3. Cover Document - Commercial Order

This document would have no legal status and would be issued for cover purposes only to allow the Contractor to maintain a commercial facade for the work. The principal points involved here are:

- (a) The present Letter Contract between Perkin-Elmer and the Agency is a commercial type agreement signed in alias for the Agency. After negotiation of the definitive basic contract, SCHEDULE and APPENDIX, which are the true documents in this procurement, a definitive commercial letter or order would be issued to Perkin-Elmer replacing the Letter Contract and reflecting the actual amount of the true contract. It would be entirely overt.

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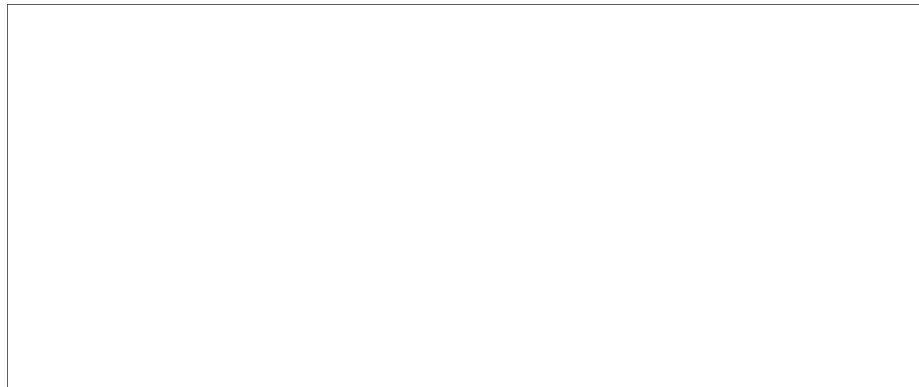
- (b) Such definitive commercial order would simply define the work as "The Projector Project" you have been undertaking for us" and would refer to "agreements reached between us."
- (c) The number of this commercial order would be the same as in the original of the basic contract SCHEDULE, and APPENDIX (retained in Agency files). This commercial order is the only place in the Contractor's files where this number appears. The number suggested to be placed on the commercial order is ISC-21-54 on the assumption that the cut-out corporation for the commercial order will be the International Survey Corporation. Therefore the contract number on the real contract in Agency files would likewise be ISC-21-54.

Note:

It was agreed on
1 May, 1955 that the contract
number would be -
ISC-21-54

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manner and bill under the overt document to the New York City cut-out. Such billings will be forwarded to the Agency and charged to and paid under the real contract in Agency files.

- (f) Actual payments to the Contractor can be made in a variety of ways, except that the final checks issued to the Contractor should be Government sterile.
- (g) Final accounting under the project would be made in accordance with terms of the definitive Government contract, with due consideration of waivers issued thereunder for security reasons.

4. Contractual Arrangements with Such Contractors

Subcontractors knowledgeable of Government interest, as for example HYCON, would have similar arrangements with Perkin-Elmer. A definitive subcontract, with any necessary SCHEDULE and APPENDIX, would be negotiated between Perkin-Elmer and HYCON, after prior approval thereof by the Agency. It would be based on the requirements of the Agency sterile government contract between Perkin-Elmer and the Government (Agency), and would be the real binding document but would remain in the background. The overt document would be the original Letter of Intent between Perkin-Elmer and HYCON and the definitive commercial order which eventually would replace the Letter of Intent. Final accounting by HYCON would be in accordance with the terms of the background documents and based on the requirements included therein (which will have been approved by the Agency).

Subcontracts with suppliers who are not knowledgeable of Government interest will have to be on a strictly commercial basis but such subcontracts should be on the best firm fixed price basis obtainable and simply written off as a necessary cost. Most subcontracts will be subject to prior approval by the Contracting Officer.

5. Summary

The above arrangements is one which affords the maximum protection to the Government and at the same time takes into account the basic security consideration of this procurement.



Contracting Officer

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